IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :
THE HONOURABLE MR.JUSTICE PIUS.C.KURIAKOSE

FRIDAY, THE 23RD MARCH 2007 / 2ND CHAITHRA 1929

WP(C).No. 10536 of 2004(D)

PETITIONER:

ANTONY JOSEPH S/O. JOSEPH,
EDATHANATTU HOUSE, PAZHAYIDOM P.O.,
CHENAPPADY, KANJIRAPPALLY, KOTTAYAM DISTRICT.

BY ADV. SRI.JOBI JOSE KONDODY

RESPONDENTS:
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1. THE SECRETARY, KANJIRAPPALLY BLOCK
PANCHAYAT, KANJIRAPPALLY, KOTTAYAM DISTRICT.

2. THE ASSISTANT EXECUTIVE ENGINEER,
KANJIRAPPALLY BLOCK PANCHAYAT, KANJIRAPPALLY,
KOTTAYAM DISTRICT.

3. THE ASSISTANT ENGINEER, KANJIRAPPALLY
BLOCK PANCHAYAT, KANJIRAPPALLY,
KOTTAYAM DISTRICT.

BY ADV. SRI.LIJI.J.VADAKEDOM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)No. 10536 of 2004 APPENDIX

Ext.P1: True copy of the Agreement dated 31-03-2003 executed between petitioner and 1st respondent

Ext.P2: True copy of the list of beneficiaries submitted by the first respondent to the petitioner

Ext.P3: True copy of the Order No.E/504/03 dated 8-04-2003 of the 1st respondent

Ext.P4: Tue copy of the Technical Sanction Slip dated 7-01-2003 of the District Rural Development Agency, Kottayam

Ext.P5: True copy of the statement showing the details of Soil Conservation Work done by the petitioner

Ext.P6: True copy of the invoice dated 25-4-2003 issued to the petitioner for collecting rice from the wholesale dealer

Ext.P7: True copy of the minutes of the meeting of Kanjirapally Block Panchayath Committee, dated 7-1-2004

//True Copy//

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PIUS C.KURIAKOSE, J.

W.P.(C)NO. 10536 of 2004

Dated this 23rd day of March, 2007

JUDGMENT

The petitioner, who is a convener for constructing Neerkuzhy and Kundoorkayyala in Chenappady Division of the Kanjirappally Block Panchayat, has filed this writ petition seeking issuance of writ in the nature of mandamus and any other appropriate writ commanding respondents 2 and 3 (Assistant Executive Engineer, Kanjirappally Block Panchayat and the Assistant Engineer, Kanjirappally Block Panchayat respectively) to measure out the work done by him under Ext.P1 agreement. Ext.P1 is a copy of the agreement dated 31.3.2003 executed for constructing Neerkuzhi and Edavarakayyala under the SGRY Scheme entered into between him and the first respondent Panchayat. On the terms of Ext.P1, the first respondent has to submit a list of beneficiaries selected for the work and Ext.P2 is a copy of the same. The petitioner claims that on receipt of Ext.P2, he started work on the basis of Ext.P1. He applied for advance amounts and on receiving his application for advance the Panchayat granted him 15,000 Kgms. of rice as advance. He complains that though the pice per Kgms of rice was calculated as Rs.7/- while selling the rice he was able to realize on

Rs.4/- per kilogram. Ext.P3 is a copy of the order by which, the petitioner has been given 15,000 Kgms of rice as advance. It is submitted that the entire work allotted to him was completed in June 2003. After completing the work, he approached the first respondent for measurement of the work and for release of the amount for the work done by him. He relies on Ext.P4 technical sanction slip regarding the work completed by him. He complains that though he approached the first respondent several times for release of the money, the first respondent insisted that the measurement has to be conducted by the Agricultural Department and that only after measurement is conducted, the amounts will be released. He claims that as directed by the first respondent, he approached the Agricultural Officer and Agricultural Officer conducted measurement and relies on Ext.P5 statement showing the details of the measurement made by the Agricultural Officer. He submits that in the meanwhile the officers of the Kanjirapplly Block Panchayath namely the Block Development Officer, The Assistant Executive Engineer and Assistant Engineer got transferred to some other places. Therefore when he submitted Ext.P5 before the 1st respondent and the 2nd respondent, they raised objection that the work was done not during their tenure and therefore they will not be able to conduct measurements and release the amounts. According to the respondents 2 & 3 the measurement is to be done by the Assistant Executive Engineer and the Assistant

Engineer during whose tenure the work was done by the petitioner. Petitioner complains that on account of red-tapism he has not so far received any amounts even though the work was completed long ago. He approached this Court on 25-3-2004 complaining that unless payment is released before 31-3-2004 and funds released to him, he stands at the risk of loosing payment for the entire work actually done by him, The prayers in the writ petition are (i) issue a writ of mandamus commanding the respondents 2 & 3 to measure out the work done by the petitioner under Ext P1 agreement (ii) Issue a writ of mandamus commanding the first respondent to release the amounts due to the petitioner under Ext. P1 agreement.

2. On admitting the writ petition this Court on 29-3-2004 issued an interim direction to the respondents to take measurements of the work already done by the petitioner and to keep proportionate amount if available in a separate deposit so that the amounts will not get lapsed after 31-3-2004.

3. The Secretary of the Block Panchayath 1st respondent has filed a detailed counter- affidavit. It is conceded that the petitioner was the convener for the work of construction of Neekuzhi and Edavara Kayyala at the Chenappady area coming within the boundaries of the 1st respondent Panchayahth and that Ext.P1 is the agreement executed by the petitioner

and also that Ext.P2 is the list of beneficiaries. It is stated that the work was proposed to be done including the same under the centrally sponsored Sampoorna Grameena Rosgar Yojana (SGRY) special component programme Scheme. It is submitted that the main characteristic or aim of introducing such works done under the SGRY scheme is to provide greater thrust to additional wage employment, infrastructural development and food security and it is stated that there is a procedure regarding wage distribution and that as part of the wages, foodgrains were to be given. This was with the objective of protecting the real wages of the workers apart from improving the nutritional standards of the families of the rural poor. It is stated that in the present case in accordance with the specifications of the scheme it was intended to supply to one worker 10 kilograms of rice per day as part of wage to be supplied at the rate of Rs. 6.20 Kilogram. The balance wage alone is to be paid in cash. The total quantity of rice which was estimated to be supplied for the present work was Rs. 32,880/- Kilogram. Thus 3288 man days were to be generated in this work by supplying 10 kilogram rice per day. It is pointed out that the petitioner as convener, was informed of the above mode of wage distribution. This aspect was explained during the beneficiary meeting also. On his request 15,000/- kilograms of rice was supplied to him as advance payment. But instead of supplying the same to the workers, petitioner sold the same in the

open market to private traders. The said act of the petitioner is in violation of the basic rules of the scheme . He was not authorised to sell the rice outside and therefore cannot complain that he got only Rs. 4 per kilogram as price of the paddy. His act actually helps private traders since the rate of rice in the open market is around Rs.12/- He had no business at all to sell the rice to private traders. If he had any complaints regarding the cost of the work or other difficulties, the block Panchayath should have been informed. He has refused to follow the basic norms, and therefore he has became dis-entitled for any relief from this court. The counter-affidavit proceeds to deny the claim of the petitioner that he had completed the work in accordance with the specifications of the scheme. The claim that the measurements were got taken by the Agricultural Department is described as false. It is pointed out that neither the petitioner nor the 1st respondent has the authority to entrust the task of measurement of an external agency, against clause 10 of the agreement which provides that the measurement has to be conducted by the supervising engineer i.e the 3rd respondent and nobody else. The measurements allegedly conducted by the agricultural officer is not sustainable and therefore Ext.P5 is valueless. The counter- affidavit proceeds to deny the petitioner's claim that he completed the work. It is submitted that even before the present writ petition was filed the 3rd respondent Assistant Engineer had inspected

the work site and found that no work was actually done by the petitioner. The entire Kayyala at the sites pointed out by the petitioner were old Kayyalas which were only cleared up by removing the existing grass. The petitioner claimed that the old Kayyalas were ones newly constructed by him. At certain portions above the existing old Kayyalas new Kayyalas were constructed by him. There was serious irregularity in the work alleged to be done by the petitioner. No Neerkuzhis (pits for collection of water) were constructed by the petitioner. There was complaints from the beneficiaries that the petitioner directly collected money from them which he was not authorised to do. It is also submitted that in compliance with the interim order of this Court the 3rd respondent again conducted an inspection and found that no works were done in a satisfactory manner.

A reply affidavit has been submitted by the petitioner answering the counter- affidavit. It is submitted that even though as per the scheme the food grains should be given as part of the wages. None of his employees were willing to take food grains as part of wages because the food grains supplied through the ration dealer were substandard. Denying the averments in the counter -affidavit that petitioner has unauthorisedly sold the rice which was supplied to him, the petitioner submits that the procedure was that he was given an invoice by the 1st respondent for collecting the rice from the wholesale dealer. Ext.P6 is copy of the invoice

dated 25-4-2003 issued to the petitioner for collecting rice. After receiving Ext.P6 He produced it before the Wholesale dealer who granted 15,000/- Kilograms of rice to the ration dealer of a particular ARD shop at Chenappaady wherefrom the workers had to collect rice after each day's work . The petitioner never sold the rice in the black market. Instead the workers who were to take rice from the dealer, collected money from him towards the value of rice. Petitioner then submits that even from the very commencement of the contract, SGRY norms were not supplied to him by the respondents. Therefore the petitioner cannot be guilty of not having executed the work as per the norms. The respondents never objected to the petitioner paying wages to the workers instead of rice during the execution of work. The petitioner had to pay Rs.150/- to each of the workers. It is submitted that it was only upon the direction of the 1st respondent that measurement of the work was done by the agricultural officer . Taking note of Ext.P5 and upon the request made by the petitioner for payment of money for the work done the Block Panchayath committee of the 1st respondent directed the 3rd respondent to prepare the bill for the work done. Ext.P7 is copy of the minutes of the meeting of the Block Panchayath committee dated 7-1-2004. It is submitted that every stage of the work was inspected by respondents 1 to 3 and they were fully satisfied with the work was done in accordance with the Ext.P1 agreement. The

present stand of the respondents that no work was done by the petitioner is totally false. The work was completed by June 2003. More than one year has elapsed after the completion of the work covered by Ext.P1. Therefore the Kayyala constructed will not look new. No new Kayyala has been constructed over the existing kayyalas. The allegation that Neerkuzhis were not constructed and that the petitioner collected moneys from the beneficiaries of the work are false. Ever since the completion of the work the petitioner has been making hue and cry before the respondents for measure of the work and for release of payment. The claim that pursuant to the interim order the site was inspected and measurements were conducted is false. None of the respondents visited the site where the petitioner had executed the work. Therefore they never cared to measure the work as per the directions of the Court.

5. After hearing the counsel for the parties Sri.Jobi Jose Kondody and Sri. Liji.J.Vadakkedom for the respondents . I directed the 1st respondent to make available the entire files relating to the award and execution of the work in question Mr.Liji .J.Vadakkedom would confess that the files could not be traced out despite all endeavours made in that regard.

6. Having considered the rival submissions addressed before me

in the light of the rival pleadings and the various documents placed on record and the circumstances noticed by this Court, I am of the view that the defence case that the petitioner had not done any work at all cannot be accepted. Admittedly it was without notice to the petitioner that pursuant to the interim order dated 29-3-2004 inspection if any was conducted by the Assistant Engineer . The petitioner's version regarding Ext.P5 seems to be more probable than that of the respondents. Similarly his version that when the Assistant Executive Engineer and the Assistant Engineer were requested to conduct measurement after furnishing Ext.P5, they took the stand that since the work was done during the tenure of their predecessors they will not be able to conduct the measurement is not an improbable one.

7. At the same time the petitioner's complaint that he could realise only Rs.4 per kilogram for the rice supplied cannot be accepted. The petitioner is bound to account for the actual quantity of the rice for which the invoices were given to him by the first respondent for taking delivery from the wholesale dealer As noticed from Ext.P2 that amongst the list of beneficiaries who are religious institutions also and it will always be possible to crosscheck the claims of the petitioner with them. Accordingly this writ petition will stand disposed of issuing the following directions:

8. Respondents 2 & 3 will conduct measurements of the works claimed to have been done pursuant to Ext.P1. Measurements will be conducted with notice to the petitioner and also with notice to the concerned beneficiary. Measurements will be recorded after seeking the opinion of the concerned beneficiary also Ext.P5 will be taken into account while recording the measurements and necessary crosschecking will be done with Ext.P5.After recording measurements is done the 1st respondent will quantify the amount actually due to the petitioner after giving credit for the rice actually supplied to the petitioner and release payment. The above exercise will be completed by the concerned respondents within three months of receiving a copy of this judgment.

The parties will bear their respective costs.

PIUS.C.KURIAKOSE, JUDGE

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